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Application No. 10/697,835
Amendment dated January 25, 2007
Reply to Office Action of October 4, 2006**REMARKS**

Applicant amended independent claims 60 and 175 and dependent claims 61, 77, and 81 to further define Applicant's claimed invention. Support for the amendment to claims 60 and 175 is found at least in FIGS. 12-15 of the application. No new matter has been added.

In the Office Action, the Examiner stated that "[n]on-elected species as set forth in claims 37-41 are also allowable." (Office Action, page 2, lines 21-22). Applicant acknowledges the Examiner's statement that claims 37-41 are allowable and respectfully requests rejoinder of claims 37-41.

The Examiner further stated that "[t]his application is in condition for allowance except for the presence of claims 60-81, 119-174, 175-216 and 218-228 directed to species non-elected without traverse. Accordingly, these claims should be cancelled." (Office Action, page 2, lines 17-19). Applicant respectfully disagrees with the Examiner's statement that "claims 60-81, 119-174, 175-216 and 218-228 are not readable on the elected figure 12." (Office Action, page 2, lines 9-10).

I. Improper Withdrawal of Claims 60-81, 119-174, 175-216, and 218-228

Applicant respectfully submits that the Examiner improperly withdrew claims 60-81, 119-174, 175-216, and 218-228 for at least one of the following grounds: (1) the examiner did not clearly set forth in the Office action the reasons why the claims withdrawn from consideration are not readable on the elected invention; (2) all of the improperly withdrawn claims include subject matter that is either illustrated in Figs. 12-15, or is applicable to the species shown in Figs. 12-15 without the need for a further drawing; and (3) the claims are directed to subject matter that was not identified by the Examiner as being a separate, patentably distinct species and are therefore not subject to a Restriction Requirement. Each ground is addressed below.

The MPEP requires that the Examiner clearly set forth in the Office Action the reasons why the claims withdrawn from consideration are not readable on the elected invention. (MPEP § 821, page 800-62, 2nd col. (Rev. 5, Aug. 2006)). In the Office Action, the Examiner stated that "[u]pon review of applicant's response and the elected

Application No. 10/697,835
Amendment dated January 25, 2007
Reply to Office Action of October 4, 2006

claims with respect to the embodiment illustrated in figure 12, examiner has determined that, in fact, claims 60-81, 119-174, 175-216 and 218-228 are not readable on the elected figure 12." (Office Action, page 2, lines 8-10). However, the Examiner has provided no explanation of why the withdrawn claims do not read on the embodiment of FIG. 12 and has not identified any elements of independent claims 60, 119, and 175 that do not read on FIG. 12.

Applicant submits that contrary to the Examiner's contention, independent claims 60, 119, and 175, and claims dependent therefrom, all read on the embodiment of the invention illustrated in elected FIGS. 12-15. Applicant further submits that the improperly withdrawn claims include subject matter that is either illustrated in FIGS. 12-15, or is applicable to the species shown in FIGS. 12-15 without the need for a further drawing. A detailed comparison of the pertinent elements of claims 60, 119, and 175 to FIGS. 12-15 is set forth below in Section II of this Reply.

Additionally, Applicant submits that the subject matter of claims 60-81, 119-174, 175-216 and 218-228 was not identified by the Examiner as being a separate, patentably distinct species. Thus, Applicant submits that claims 60-81, 119-174, 175-216, and 218-228 are not subject to a restriction requirement.

For the above reasons, Applicant submits that claims 60-81, 119-174, 175-216, and 218-228 were improperly withdrawn by the Examiner and must be rejoined and examined.

II. Claims 60-81, 119-174, 175-216, and 218-228 Read on the Embodiment of the Invention Illustrated in FIGS. 12-15

Attached hereto as Exhibit A are FIGS. 12-15 labeled to show the pertinent elements of independent claims 60, 119, and 175 for the Examiner's reference.

A. Independent Claim 60

FIG. 12 of Exhibit A shows a fragmentary view of the implant. Applicant amended independent claim 60 to replace the terms "right facet" and "left facet" with "first facet" and "second facet" respectively. Claim 60 recites a plurality of surface

Application No. 10/697,835
Amendment dated January 25, 2007
Reply to Office Action of October 4, 2006

projections (322) having a plurality of facets (324, 326, 332, 334). (See FIG. 12 of Exh. A). At least a first and a second of the surface projections (322) each have at least a first facet (324) and at least a second facet (326) opposite the first facet (324). (See FIGS. 12 and 13 of Exh. A). Each of the first and second facets has a length and a slope, the length of the first facet (324) being longer than the length of the second facet (326), and the slope of the second facet (326) being steeper than the slope of the first facet (324). (See FIG. 13 of Exh. A). The second facet (326) includes a perimeter having at least a first and a second portion arranged to form an apex having an included angle greater than 90 degrees between the first and second portions of the perimeter. (See FIG. 14 of Exh. A). FIG. 14 illustrates an end view of the implant of FIG. 12. As seen in FIG. 14, the second facet (326) includes a perimeter, which from an end view is in the shape of a triangle. The perimeter of the second facet (326) has a first and second portion arranged to form an apex having an included angle greater than 90 degrees between the first and second portions of the perimeter.

Applicant respectfully submits that claim 60, as amended, reads on the embodiment of FIG. 12. Applicant respectfully requests the Examiner to withdraw the requirement to cancel claim 60.

B. Independent Claim 119

Independent claim 119 recites an orthopedic implant comprising a leading end (302) for introduction of the orthopedic implant into the bone, an opposite trailing end (304), spaced apart sides therebetween and a plurality of surface projections (322). (See FIG. 12 of Exh. A). The projections 322 have a forward facet (324) directed at least in part toward the leading end (302) and a rearward facet (326) directed at least in part toward the trailing end (304). (See FIG. 13 of Exh. A). The rearward facet (326) includes a perimeter having at least a first and a second portion arranged to form an apex having an included angle greater than 90 degrees between said first and second portions. (See FIG. 14 of Exh. A).

FIG. 13 in Exhibit A illustrates a side elevation view of the implant. Each of the surface projections (322) has a forward facet (324) directed at least in part toward the

Application No. 10/697,835
Amendment dated January 25, 2007
Reply to Office Action of October 4, 2006

leading end (302) and a rearward facet (326) directed at least in part toward the trailing end (304). As seen in FIG. 14, the rearward facet (326) includes a perimeter, which from the end view shown in FIG. 14 is in the shape of a triangle. The perimeter of the rearward facet (326) has a first and second portion arranged to form an apex having an included angle greater than 90 degrees between the first and second portions of the perimeter. (See FIG. 14 of Exh. A).

Applicant respectfully submits that claim 119 reads on the embodiment of FIG. 12. Applicant respectfully requests the Examiner to withdraw the requirement to cancel claim 119.

C. Independent Claim 175

Claim 175 contains several elements found in claims 60 and 119 (all elements of which read on FIG. 12), and the elements not found in claims 60 and 119 are discussed below.

Claim 175 recites an orthopedic implant where the first and second surface projections (322) each form a base having a perimeter and a portion above the base. (See FIGS. 13 and 15 of Exh. A). As now amended, claim 175 recites that the base has a width and a length greater than the width, the length extending along the mid-longitudinal axis of said implant, the width being transverse to the length. (See FIG. 15 of Exh. A). The portion above the base of said first and second surface projections extends outside of the perimeter of the base of a respective one of said first and second surface projections. (See FIG. 13 of Exh. A). The first and second surface projections (322) each have opposed side facets (332) and (334) directed generally toward said spaced apart sides of said implant, respectively. (See FIG. 15 of Exh. A). The side facets are located between the forward facet (324) and the rearward (326) facet of each of the first and second surface projections (322). (See FIG. 15 of Exh. A). The side facets (332 and 334) converge toward each other in a direction away from said exterior surface of said implant (to form a peak 326 seen in FIG. 15 of Exh. A).

Applicant respectfully submits that claim 175 reads on the embodiment of FIGS. 12-15. Thus, Applicant respectfully requests the Examiner to withdraw the

Application No. 10/697,835
Amendment dated January 25, 2007
Reply to Office Action of October 4, 2006

requirement to cancel claim 175.

The Office Action indicates that claims 1-59, 82-110, and 112-118 are allowed. (Office Action, page 1). Applicant respectfully submits that independent claims 60, 119, and 175 presently read on the elected embodiment of FIGS. 12-15. Accordingly, independent claims 60, 119, and 175 are also patentable.

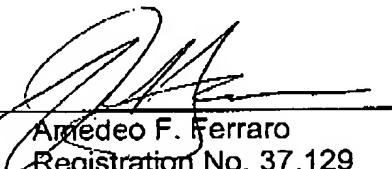
In view of the foregoing remarks, it is respectfully submitted that claims 60, 119, and 175 read on the elected FIG. 12 and are allowable. Dependent claims 61-81, 120-174, 176-216, and 218-228, dependent from independent claims 60, 119, and 175, respectively, or claims dependent therefrom, are allowable at least due to their dependency from an allowable independent claim. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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Dated: January 25, 2007

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